

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne
Date: July 19, 2013
Re: Materials for Agenda Item #2

I have attached materials for the second item on your July 29, 2013 agenda, a hearing on spending to influence the 2012 general election for Maine House of Representatives, District 1. The hearing will be a continuation of an investigation you authorized at a special meeting held on November 5, 2012, the day before the election. The Commission previously held its first investigative hearing in this matter on January 17, 2013.

The Commission staff proposes that you open the hearing at 9:00 a.m. on July 29 and hear testimony from at least three witnesses. The anticipated witnesses are discussed on page 22 of the attached staff memorandum dated June 28, 2013. Rep. Michael Nadeau's attorney, Timothy C. Woodcock, is expected to advise the Commission by July 22, 2013 whether he would like to produce any witnesses. We suggest that you make a final determination on July 29, after the hearing is concluded.

I have attached:

- Staff memorandum dated June 28, 2013
- Notice of hearing for July 29, 2013 hearing (see pages 2-3 for a list of factual and legal issues potentially to be determined by the Commission on July 29)
- Relevant statutes and rules
- Transcript for November 5, 2013 meeting
- Transcript and exhibits for January 17, 2013 hearing

We anticipate sending you another packet of materials next week concerning this agenda item, which will include updated information concerning expected witnesses.

Thank you for your consideration of these materials.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: June 28, 2013
Re: Staff Memorandum for July 29, 2013 Hearing on Campaign Spending to Influence
Maine House of Representatives, District 1

INTRODUCTION

All candidates for elected office are expected to conduct their campaigns by the same rules of campaign finance. Elections become unfair if candidates disregard those rules to gain advantages for themselves. Regardless of the opponent and the importance of the race – the rules apply:

- All legislative candidates have limitations or restrictions on the contributions that they may receive. Maine Clean Election Act candidates may not receive any contributions, after qualifying to receive public funds. Traditionally financed candidates may receive contributions of up to \$350 per donor per election.
- The Maine Legislature has directed that when a candidate cooperates with another person's expenditure, the candidate has received a contribution that is subject to the limits and restrictions. In other words, independent expenditures must be truly independent, or they constitute contributions to the candidate.
- If candidates sign up to receive public funding under the Maine Clean Election Act, they agree to certain restrictions on their contributions and expenditures. That is one of the basic trade-offs of the program. It is a serious matter for a Maine Clean Election Act candidate to accept the benefit of public funding and to disregard the restrictions that are attached to accepting public funds.

This matter is a continuation of the investigation which you directed the staff to undertake in November 2012, after finding preliminarily that a complaint by the Maine Democratic

Party raised legitimate compliance issues. After holding a rescheduled hearing in January 2013, the Commission staff has pursued the investigation through obtaining financial records and seeking to identify the sources of funds used for campaign communications. The purposes of this memo are to summarize the results of the investigation and to offer some analysis of the evidence presented to date; to identify the witnesses who are being called to testify at the July 29, 2013 hearing and the subject matter of their testimony; and to outline the factual and legal issues which you may need to address at the conclusion of the hearing.

During the investigation, the Commission has received evidence that State Representative A. Michael Nadeau, a Maine Clean Election Act candidate, may have cooperated with others who spent a total of \$1,895 of private funds on two campaign communications to support his election. The evidence raises the question of whether Mr. Nadeau or his business may have been the source of some or all of the funds. This amount is significant in a House race in which both candidates spent, on average, around \$4,600.

- Mailing. Mr. Nadeau's campaign treasurer paid \$1,475.16 for a mailing designed to go to every household in District 1. At your last hearing, you received testimony that the mailing was prepared by two of the campaign's volunteers. The treasurer has given three different stories to the Commission about where the funds came from to pay for the mailing. He finally claimed that he received a total of \$1,500 in cash from three relatives of the candidate, although this claim lacks crucial details and is not substantiated by other testimony or by any documentation. Financial records obtained by the Commission during the investigation indicate that the candidate received \$2,000 from his business on the very same day on which the treasurer paid for the mailing with a personal credit card and later deposited \$1,500 in cash into his credit union account to reimburse himself. Given these facts, the question of whether the candidate personally funded the mailing through his business must be given serious consideration.
- Advertisement in weekly newspaper. A friend of the candidate who was a very active volunteer and paid website consultant for the campaign purchased an ad promoting the candidate in a weekly newspaper. In his testimony to the

Commission, the friend claimed that Mike Nadeau did not know he was going to be placing the ad – even though

- the candidate had talked to a newspaper saleswoman about his interest in placing a campaign ad just a few days before; and
- the candidate personally hand-wrote the text of the ad that his friend gave to the newspaper, along with a notation of the 3:00 p.m. submission deadline that the candidate had received from the newspaper saleswoman.

Under these circumstances, it is difficult for staff to accept that there was no consultation or cooperation between the candidate and his friend concerning the advertisement.

If these expenditures for the mailer and the ad were made with Mr. Nadeau's cooperation, it would constitute the acceptance of impermissible in-kind contributions in violation of the Maine Clean Election Act. Your assessment of these potential violations may depend on:

- whether you find the testimony believable that the expenditures for these two communications were undertaken independently of the candidate; and
- whether you find the testimony believable that the candidate had no involvement in the \$1,475 used for the mailing and that the funds came from three relatives of the candidate without the candidate's knowledge.

RELEVANT LAW

The Maine Clean Election Act (MCEA) program is a campaign finance reform program aimed at reducing the influence of private contributions on political candidates for the Legislature and for the office of Governor. It was created by a citizen initiative that Maine voters enacted in 1996. The program is designed to be a voluntary system of full public funding. A candidate who accepts MCEA funds is under an obligation to run his or her political campaign within certain financial and legal restrictions.

Sole Source of Campaign Funds

After qualifying to receive MCEA funding, candidates are only permitted to spend public campaign funds received under the MCEA program. (21-A M.R.S.A. § 1125(6) and Chapter 3, § 6(1) of the Commission Rules)

Prohibition on Accepting Contributions

Also, after qualifying to receive MCEA funding, candidates may not accept cash or in-kind campaign contributions. (21-A M.R.S.A. § 1125(6) and Chapter 3, § 6(2) of the Commission Rules)

Maine Election Law defines “contribution” to mean “a gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office” (21-A M.R.S.A. § 1012(2)(A)(1))

Political Committee

Candidates sometimes invite or accept assistance from volunteers or paid individuals who have associated themselves with each other or with the candidate to promote the candidate’s election. The term “political committee” means “2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.” (21-A M.R.S.A. § 1(30)) There is no requirement in Election Law that the members of a political committee be assigned any particular title or specified role by a candidate. In the experience of the Commission staff, most legislative campaigns in Maine are informal group efforts and do not have the formal framework that a gubernatorial campaign may have. Most legislative candidates do not give titles to individuals who regularly help with the campaign, other than the title of treasurer – a position which is required under campaign finance law – or, perhaps, campaign manager.

Registration of Candidate and Political Committee

Candidates are required to register and appoint a treasurer before accepting any contributions, making expenditures or incurring obligations. (21-A M.R.S.A. § 1013-

A(1)(A)) If a candidate “appoints” a political committee, the candidate is required to appoint a treasurer of the political committee within 10 days and to register certain information about the political committee. (21-A M.R.S.A. § 1013-A(1)(B)) Candidates are required to amend registrations within 10 days of a change in the registration information. (21-A M.R.S.A. § 1013-A(5)) Other types of committees, such as PACs, are also required to register with the Commission at the onset of campaign financial activity. (21-A M.R.S.A. §§1053 & 1056-B)

Registrations are, thus, preliminary disclosure statements about who is going to be involved in a political campaign. Like any disclosure statement, they may be completely accurate or they may contain omissions. The information can become outdated if the political campaign does not amend the registration. Registration statements cannot be taken as determinative of who is actually involved in a candidate’s campaign, political action committee or other political group.¹

Coordinated Expenditures are a Form of Contribution

Under Maine Election Law, if a candidate, a candidate’s political committee, or an agent of the candidate or candidate’s committee suggests that another person spend money to promote the candidate, the resulting expenditure is considered a contribution to the candidate. (21-A M.R.S.A. § 1015(5)) A contribution also results if the candidate or candidate’s committee or agent of either cooperates or consults with the other person on an expenditure to promote the candidate, or makes a suggestion or request for such an expenditure. Many jurisdictions in the United States have a similar provision. Otherwise it would be easy for candidates to circumvent limits and restrictions on campaign contributions by simply asking others to pay for goods and services directly.

Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s

¹ In practice, not all candidates and PACs take the registration statement as seriously as they should. One 2012 enforcement situation was caused by a faulty registration statement, which seemed to indicate that a State Senator had been a primary decision-maker for the PAC of her legislative caucus, which ultimately spent money on television advertising against her opponent. The registration statement was the result of an inaccurate email from the PAC treasurer to the Commission staff some six months prior, which we initiated because the PAC had no listed officers. Thus, while registration statements can provide some evidence of who is involved in a campaign, they may not be reliable and are often incomplete.

political committee or their agents is considered to be a contribution to that candidate.

(21-A M.R.S.A. § 1015(5))

These are sometimes referred to as “coordinated expenditures,” because the spender has coordinated with the candidate on the expenditure. Under 21-A M.R.S.A. § 1015(5), cooperation by “the candidate’s political committee” or the “agents” of the candidate or the candidate’s political committee is also considered a contribution to the candidate. In these circumstances, there is no requirement in statute that the candidate have actual knowledge that the individuals involved in his political committee or his agents or agents of his committee have consulted with others on expenditures. The Election Law does not define the term “agent.” The Commission staff’s proposed application of the term to this matter is discussed below, beginning on page 22 of this memo.

In 2011, the Commission adopted a rule setting out some activities or circumstances that are considered or presumed to be coordinated expenditures. (Chapter 1, Section 6(9) of the Commission’s Rules) The rule states that cooperation or consultation on a communication to voters includes:

Discussion between the candidate² and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and

Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

(Ch. 1, Section § 6(9)(A) of the Commission’s Rules) Under the rule, coordination by the candidate is presumed if anyone who has been the candidate’s treasurer or has received compensation from the campaign within the last 12 months has cooperated with or consulted on the expenditure. (Ch.1, §6(9)(B) of the Commission’s Rules) The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

²For purposes of this rule, the term candidate includes the political committee authorized by the candidate to promote or support his election and all agents for the candidate or the committee.

Paid Communications by the Candidate's Political Committee or Agents Are Contributions

If a candidate, or the candidate's political committee or agents, prepare campaign materials and any person finances the dissemination or distribution of the materials, Maine Election Law states that the financing constitutes a contribution to the candidate.

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

(21-A M.R.S.A. § 1015(5))

Financial Reporting

Candidates must file campaign finance reports disclosing all expenditures made and all contributions received, including in-kind contributions. (21-A M.R.S.A. § 1017(5))

Campaign finance reporting by candidates, PACs, and others is the essential tool for the State of Maine to verify that candidates, PACs, and others are complying with campaign finance laws, including the Maine Clean Election Act and contribution limits.

Penalties for Misconduct

Recognizing that legal sanctions are sometimes necessary to promote compliance with Election Law, the MCEA provides that a person who violates the MCEA is subject to a fine not to exceed \$10,000. (21-A M.R.S.A. § 1127(1)) In addition, for good cause shown, the Commission may require a candidate to repay public campaign funds.

HISTORY OF THIS MATTER THROUGH PREVIOUS HEARING

In the 2012 general election, Allen Michael ("Mike") Nadeau of Fort Kent challenged the incumbent, John Martin, to represent District 1 in the Maine House of Representatives. Mr. Nadeau is the sole proprietor of Mike's & Sons, which sells equipment for landscaping

and maintaining lawns and gardens. (1/17/2013 Transcript³ at 116) His treasurer was L. Philip Soucy, also of Fort Kent. (Id. at 118) Mr. Soucy signed Mr. Nadeau's candidate registration form. (Exhibit 29) He also signed two of Mr. Nadeau's campaign finance reports (Exhibits 30-31), certifying that the reports were complete. Mr. Soucy is retired and formerly sold investment products. (1/17/2013 Transcript at 104)

November 5, 2012 Decision by Commission to Investigate

On Friday, November 2, 2012, a group of persons calling themselves Citizens for Effective Government filed Independent Expenditure Report #205 with the Commission. (Exhibit 28) The report indicated that the group had paid \$1,475.16 to a print shop in Fort Kent for a mailing in support of Mike Nadeau. The cover sheet of the report and the required affidavit (second page) were signed by Philip Soucy, the treasurer of Mr. Nadeau's campaign. (Id.)

After business hours on November 2, 2012, the Maine Democratic Party filed a request for investigation with the Commission (Exhibit 1) contending that Mr. Nadeau had received a contribution because his treasurer – an agent of the campaign – cooperated with the expenditure:

As Treasurer of Mr. Nadeau's campaign – he is clearly an "agent" of the campaign and as such, is prohibited from coordinating with any outside organization on expenditures (let alone an organization he controls). As a result, the \$1,475.16 expenditure made by CEG to support Candidate Nadeau is an illegal contribution to the campaign.

(Exhibit 1, at 2) As a Maine Clean Election Act candidate, Mr. Nadeau is not permitted to accept campaign contributions.

On the evening of November 2, 2012, Assistant Director Paul Lavin telephoned Mr. Soucy to notify him that a complaint had been filed concerning the mailing that Mr. Soucy had reported. In the course of the conversation Mr. Soucy provided the first of three different stories as to the source of funds for the mailing – namely that Dana Saucier had provided

³ As described below on pages 10-11, on January 17, 2013 the Commission held an evidentiary hearing for purposes of its investigation. In this memo, citations to the hearing transcript are abbreviated as "1/17/2013 Transcript." Exhibits introduced into evidence at that hearing are referred to by number.

most of the funds.⁴ That evening, Mr. Lavin also spoke with Mr. Nadeau by phone and informed him about the complaint. He then transmitted the complaint to both of them by e-mail (Exhibit 2), informing them that the complaint was likely to be heard on Monday, November 5, 2012. Mr. Lavin also reached out to then-House Assistant Republican Leader Andre Cushing and suggested that Mr. Soucy might need legal counsel.

On Saturday, November 3, 2012, I interviewed Philip Soucy by telephone. He provided a second story regarding the source of funds, claiming that they came from a number of small donors who gave less than \$100 each. (Exhibit 3) At the conclusion of the phone call, I mentioned that a meeting had been scheduled for Monday afternoon at 3:00 p.m. Mr. Soucy informed me that he had heard about the meeting from an attorney, William Logan, who would be representing him. (Id.)

Following my conversation with Philip Soucy, I left a voicemail message for Rep. Nadeau on his cell phone number, inviting him to call me at the Commission Office on Sunday, November 4 between 8:00 a.m. and 5:00 p.m. for an interview. I did not hear back from him. (Exhibit 4 at 5)

During the morning of Monday, November 5, 2012, I reached Mr. Nadeau by phone and told him that the Commission was meeting that afternoon at 3:00 p.m. to consider the complaint against him. (Exhibit 6) The cellphone reception was not good, and the call terminated. Mr. Nadeau did not call me back later in the day, and chose not to participate in the Commission's meeting. (Id.)

The Commission met at 3:00 p.m. on Monday, November 5, 2012, the day before the election. A professional transcript of the November 5, 2012 meeting will be transmitted to you with this memorandum.⁵

⁴ At the July 29, 2013 hearing, the Commission staff plans to introduce into evidence a contemporaneous summary of the conversation.

⁵ Citations to the transcript are abbreviated in this memo as "11/5/2012 Transcript."

Mr. Soucy participated in the November 5, 2012 meeting by telephone. His attorney, William Logan, appeared before the Commission in person. When Mr. Soucy was asked who provided the \$1,500 in cash to pay for the mailing, he provided his third explanation for the source of funds: he claimed that he had received \$500 in cash from Norman Nadeau, Kenneth Nadeau, and Ronaldo Thibeault. (11/5/2012 Transcript at 25) After hearing presentations from Mr. Logan and from the Maine Democratic Party, the Commission made initial findings that:

- (1) a coordinated expenditure (*i.e.*, one made “in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s political committee or their agents”) occurred under Title 21-A, section 1015(5) as a result of the involvement of treasurer L. Philip Soucy in the Mike Nadeau campaign and Citizens for Effective Government, and
- (2) the coordinated expenditure constituted a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act.

(11/5/2012 Transcript at 69-70) The Commission then directed its staff to continue an investigation into the factual issues concerning: 1) the expenditure by Citizens for Effective Government, 2) whether Citizens for Effective Government should have registered as a political action committee, and 3) the sworn statement by L. Philip Soucy that there was no coordination between the Nadeau campaign and Citizens for Effective Government regarding the expenditure for the communication. (Id. at 70-71) The staff prepared a written determination confirming this following the meeting. (Exhibit 9)

Commission’s January 17, 2013 Hearing

The Commission held an adjudicatory hearing on January 17, 2013, and received sworn testimony from candidate Mike Nadeau; a friend of the candidate who was a very active

volunteer, James Majka; another volunteer, Dana Saucier; and two employees of the Fiddlehead Focus newspaper.

Mr. Soucy was present for the hearing but declined to answer questions from the Commission, asserting his Fifth Amendment privilege against self-incrimination. During a break in the Commission's hearing, the Commission staff consulted with the Attorney General's Office regarding options to receive relevant information from Mr. Soucy in light of his assertion of the privilege. Following the hearing, and after a review of the financial reports and evidence received by the Commission, the Attorney General's Office filed a criminal complaint in Maine District Court in Augusta charging that Mr. Soucy made a false statement in a report required under the Election Law (21-A M.R.S.A. § 1004(2)). A trial is expected later in the summer.

At the conclusion of the January 17, 2013 hearing, the Commission indicated that the investigation would continue and that staff should have an opportunity to consider what additional information and/or testimony might be necessary to resolve the remaining unanswered questions – particularly in light of Mr. Soucy's decision to invoke his Fifth Amendment privilege. (1/17/13 Transcript at 159-168)

On February 14 and March 8, 2013, the Commission staff served subpoenas on four financial institutions seeking records for four accounts belonging to Rep. Nadeau and James Majka, and requesting a record of deposit by Philip Soucy. Initially, Rep. Nadeau and Jim Majka objected to the subpoenas, but they withdrew their objections shortly before your April 5, 2013 meeting. After the financial records were received and reviewed, the Office of the Maine Attorney General provided assistance to the Commission pursuant to 21-A M.R.S.A. § 1003(4) by assigning an investigator to conduct field interviews in Fort Kent, Maine and in Connecticut. During the first week of June, the Commission staff and counsel reviewed the evidence and advised the Chair of our view that the investigation could be concluded with one final hearing in July. The hearing was scheduled for July 29, 2013.

SUMMARY AND ANALYSIS CONCERNING TWO COMMUNICATIONS

Fiddlehead Focus Ad⁶

The Fiddlehead Focus is a print and online community newspaper based in Fort Kent, Maine. (1/17/2013 Transcript at 5) Its print edition is published weekly on Wednesdays. (Id.) For October 31, 2012, it published a special section in its print edition, which was an opportunity for the paper to sell election-related advertising. (Id. at 7)

In the last two weeks of the campaign, Mr. Nadeau considered buying an advertisement in the October 31 special section to promote his political campaign. (Id. at 8-9) He talked to a newspaper employee, Julie Daigle, about placing a political ad. (Id.) On the Thursday or Friday before publication, they met in person and discussed different options for prices and sizes of the ad. (Id. at 8-9) The candidate took notes on a pricing sheet provided by Ms. Daigle. (Id. at 9)

Julie Daigle checked back with Mr. Nadeau on the morning of Monday, October 29 (two days before the publication date). (Id. at 10) He indicated that he was going to submit the ad to the newspaper for publication. (Id. at 11) She expected it by e-mail. (Id. at 12) She gave him a deadline of mid-afternoon by which she would need to receive the ad. (Id. at 11) She testified that the deadline might have been 2:30 p.m., but that she could not remember the exact time. (Id.) Mr. Nadeau never e-mailed the ad and never contacted her to say that he was not providing an ad. (Id. at 12)

Instead, on that afternoon of October 29, the candidate's friend and campaign volunteer, James Majka, arrived at the newspaper office with three \$100 bills in hand to purchase an ad. (Id. at 17, 21-22) He met with another newspaper employee, Dennis Michaud, to place the order for the ad. (Id. at 17) Mr. Majka arrived at the office with a sheet of lined paper (Exhibit 22) containing the handwritten text for the ad, which he gave to Mr. Michaud. (1/17/2013 Transcript at 18-19) The handwriting on Exhibit 22 also contained

⁶ Testimony concerning the Fiddlehead Focus ad may generally be found in the 1/17/2013 Transcript at pages 4-33 (testimony by newspaper employees), 44-57 (James Majka), and 140-51 (Michael Nadeau).

the notation "Fiddlehead ad By 3 oClock" at the top of the page. At the January 17, 2013 hearing, Rep. Nadeau confirmed that he personally wrote the language at the bottom of Exhibit 22 (the text that was later published as the ad) and that he wrote the notation "Fiddlehead ad by 3 oClock" at the top of the page. (Id. at 146-47)

Both Rep. Nadeau and Mr. Majka testified that the candidate did not know that Mr. Majka was going to place the advertisement in the Fiddlehead Focus newspaper. (Id. at 47-48, 145)

During Mr. Majka's first visit to the newspaper office on the afternoon of Oct. 29, 2012, Mr. Majka paid \$300 to the Fiddlehead Focus. He paid with the three \$100 bills that he had in his hand when he walked into the office. (Id. at 17, 21) On his second visit the following day, Mr. Majka paid another \$120 to have the ad printed in color, for a total of \$420. (Id. at 27; see also Exhibit 23)

At the hearing, Mr. Majka said that he paid for the ad himself. (Id. at 55) He denied that anyone gave him the cash or reimbursed him for the ad. (Id.) He said that he paid for it with cash that he keeps at home. (Id.)

The ad appeared in the Oct. 31, 2012 special section of the Fiddlehead Focus with the attribution statement "paid for by Jim Majka." (Exhibit 21) The ad did not include a disclaimer statement indicating whether it was authorized by any candidate.

November 1st Mailing to District 1 Voters⁷

On Thursday, November 1, 2012, Mr. Soucy used his personal credit card to pay \$1,475.16 to a Fort Kent print shop (Paper Signs Ink) for a mailing to support Michael Nadeau. (Exhibit 33) Later that afternoon, he deposited \$1,500 in cash into his personal account at a credit union to reimburse himself. (At the July 29, 2013 hearing, the Commission staff plans to introduce into evidence two records of the deposit.)

⁷ Testimony concerning the mailing may generally be found in the 1/17/2013 Transcript at pages 57-60 (testimony by James Majka), 78-103 (Dana Saucier), and 133-36 (Michael Nadeau).

According to testimony received at the January 17, 2013 hearing, the idea of the mailing originated as follows. On Wednesday, October 31, 2012, Jim Majka and Dana Saucier (another campaign volunteer) were with the candidate in the candidate's campaign headquarters reviewing the campaign advertising for other candidates in the two weekly newspapers serving the area. (1/17/2013 Transcript at 79-81) Mr. Saucier testified that he cannot remember any specific observations or reactions by the candidate but that the group "took exception to certain verbiage" in the advertisements. (Id. at 81)

According to Mr. Saucier, after he and Jim Majka left the building, they discussed how they could respond to the newspaper advertisements while they were leaning up against their trucks outside. (Id. at 80) They came up with the idea of a mailing that would go into every household in the community by the Saturday before the election. (Id. at 78-80) Mr. Saucier testified that the idea of the mailing did not come up within campaign headquarters when Mr. Nadeau was present. (Id. at 81)

Mr. Saucier testified that he went home, conducted some research, and put together a first draft of the mailing, which he e-mailed to Jim Majka. (Id. at 82-83) Mr. Majka polished it up, shortened it, and provided the graphics. They exchanged additional drafts. (Id.) All of this happened during the day and evening on Wednesday, October 31st and early morning on Thursday, November 1st. (Id.) Jim Majka submitted it to the print shop "for costing and printing." (Id. at 83-84)

Mr. Saucier remembered that Philip Soucy had previously said "that he had money to be able to do these kinds of mailers." (Id. at 92-93, 97) So, Mr. Saucier left Mr. Soucy a voicemail message at his home, on the premise that money was still available. (Id. at 97) Mr. Saucier requested that Mr. Soucy meet Mr. Saucier at the printer's office Thursday morning (November 1). (Id. at 92)

"Someone" had told Mr. Saucier "that if you wanted to do this kind of thing, that you had to fill out some paperwork for the Ethics Committee or Commission" (Id. at 97) Mr.

Saucier contacted Charlie Webster, the chair of the Maine Republican Party, to find out “the particulars,” and Mr. Webster said someone would call him back. (Id. at 85, 97) Two or three hours later, former Rep. Andre Cushing called Mr. Saucier and sent him a link for the independent expenditure reporting form on the Commission’s website. (Id. at 85) Mr. Cushing instructed Mr. Saucier that the cost “had to be under \$1,500.” (Id. at 84) In his testimony, Mr. Saucier recalled “It had something to do with otherwise filing as a lobbyist or some kind of other entity beyond what we were.” (Id. at 86)

Mr. Soucy showed up at the print shop (Paper Signs Ink) around 9:00 a.m. on the morning of November 1. (Id. at 92) When Mr. Saucier talked to the print shop, he requested that the cost of the job be under \$1,500, even if it meant cutting out some of the smaller communities in the district. (Id. at 87)

Mr. Saucier stated that he filled out the sections of the independent expenditure reporting form, except for the mailing address and the signature lines. (Id. at 88) He testified that he came up with the name of Citizens for Effective Government, which he considered to be himself, James Majka, and Philip Soucy. (Id. at 91) After leaving the print shop, Mr. Saucier went to the Fort Kent town office with Mr. Soucy to get Mr. Soucy’s signature on the affidavit notarized. (Id. at 88, 91)

Mr. Saucier stated that, to his knowledge, Rep. Michael Nadeau was unaware that Mr. Saucier, James Majka, and Philip Soucy were developing the mailer and arranging for the printing and distribution of it. (Id. at 95)

Questions Remaining

The testimony received on November 5, 2012 and January 17, 2013 (relatively close to the events in question) leaves factual questions unresolved that go to whether the candidate was involved in the communications and whether he had a role in providing the money or facilitating the payment for the communications. The unresolved questions include:

- What was the original purpose for the campaign language written on a sheet of paper in the candidate's own hand-writing (Exhibit 22), and what was his purpose in giving the sheet of paper to Mr. Majka?
- If he gave it to James Majka to post on the website, why did the note contain the name of the newspaper saleswoman and the submission deadline she provided to the candidate? Why is the language not on the website?
- Did the candidate consult with Mr. Majka concerning the advertisement before Mr. Majka purchased it?
- Did the \$1,500 for the mailing actually come from the candidate's three relatives, as Mr. Soucy testified (not under oath but with the aid of legal counsel) on November 5, 2012?

Did Jim Majka Purchase the Fiddlehead Focus Ad on his Own?

At the January 17, 2013 hearing, Mr. Majka was asked about the newspaper advertisement and whether the candidate cooperated with him to create and place the ad. (*Id.* at 44-57) It took five questions to obtain a straight answer from Mr. Majka on the simple question of whether it was his own handwriting on the lined notepaper (Exhibit 22) that contained the text for the Fiddlehead Focus ad:

Q: Whose handwriting is that on that page?"

A: It could be mine; I don't know.

Q: ... Are you telling this Commission that you can't—you're not sure whether this is your handwriting?

A: I don't know where these notes came from; I'm not sure. I really don't know.

Q: The question is is that—

A: I don't remember how it—I don't remember how I went into the paper with the information for the ad.

Q: ...[M]y question now is[,] looking at the text, especially the text at the bottom of that page, is that your handwriting?

A: It could be notes from another meeting that we had--

Q: Mr. Majka, the question's really simple; is that your handwriting or is that not your handwriting.

A: It doesn't look like my handwriting.

Q: Where did you get this paper, Mr. Majka?

A: I wish I could tell you that. I really don't know.

(1/17/2013 Transcript at 50-51)

Later in the hearing, Rep. Nadeau confirmed that the handwriting on Exhibit 22 was his. (Id. at 146-47) He also testified that throughout the campaign he gave campaign messages that he wrote on a notepad to James Majka for him to post on the campaign website, www.mikenadeau.net. (Id. at 147) Mr. Majka testified that he discussed updates for the campaign website with Mr. Nadeau "on a daily basis," and that Mr. Nadeau would write notes on his pad for Mr. Majka to post on the website. (Id. at 52) Mr. Majka thus had many opportunities to see Mr. Nadeau's handwriting.

The Commission then pressed Mr. Majka concerning the circumstances under which he received Exhibit 22. (Id. at 51-54) When asked, "Where did you get that piece of paper, Mr. Majka," he described the candidate's general practice of providing Mr. Majka handwritten messages to be posted to the campaign website. (Id. at 51-52) He proposed that Exhibit 22 could have been one of those notes: "Now, this note looks like something he might have wrote for a posting ...;" and "this looks like notes that he would write down for me to transcribe, to post on his site." (Id. at 52-53) Mr. Majka admitted, however, that these possible explanations for his receipt of Exhibit 22 were merely speculation and he claimed not to remember the circumstances. (Id. at 52-53)

Rep. Nadeau was also unable to explain the circumstances under which he gave Exhibit 22 to Mr. Majka. Rep. Nadeau testified that he wrote the text on Exhibit 22 originally thinking he would run it "as an ad," but changed his mind and did not put it in the paper because he did not have enough campaign funds to buy a newspaper ad. (Id. at 147-48) But, as his testimony continued, he went on to testify twice that he created the text to be posted to his campaign website. (Id. at 148)

At the hearing, the Commission asked Rep. Nadeau to produce any page of the website that contained the handwritten language in Exhibit 22. (1/17/2013 Transcript at 166) Following the hearing, Rep. Nadeau did not provide any such web page and the staff has been unable to locate any evidence of it.

Rep. Nadeau testified that he was unaware of the Fiddlehead Focus ad before it appeared in the paper. (Id. at 145) James Majka was asked whether Rep. Nadeau knew he was going to be placing the ad in the newspaper, and he replied “no.” (Id. at 47-48) Later, however, Mr. Majka admitted that he did not know whether he had talked to Rep. Nadeau about the ad before or after it ran (“I don’t know if I talked to him before, or I think I probably told him the day of or the day after, but I cannot say for sure; I just don’t remember.”) (Id. at 49)

In weighing the credibility of the proffered explanations, the Commission may consider the following:

- James Majka’s initial refusals to acknowledge that the candidate wrote Exhibit 22 (Id. at 50).
- The candidate’s admitted interest in placing a campaign ad in the October 31 special section of the Fiddlehead Focus and his communications with the newspaper saleswoman about buying an ad. (Id. at 8-9)
- The candidate’s testimony that he decided not to purchase a newspaper ad because he did not have enough campaign funds. (Id. at 148) This testimony is supported by Exhibit 32, the checkbook register for the campaign, showing that on October 29, the campaign had a cash balance of \$418, which was insufficient to cover both the Fiddlehead Focus ad and radio ads costing \$396 that the candidate purchased on October 30.
- The candidate’s acknowledgment that he personally handwrote the language at the bottom of Exhibit 22, which tracks the language in the published ad, and that he personally wrote “Fiddlehead ad By 3 oClock” at the top of the sheet. (Id. at 147)

What were the Actual Sources of Money for the Mailing?

Mr. Soucy's Changing Story

Over the four days from November 2-5, 2012, Philip Soucy provided three inconsistent explanations to the Commission concerning the sources of the \$1,500 in cash he deposited on November 1 to reimburse himself for the mailing:

- Version #1. On the evening of Friday, November 2, 2012, Assistant Director Paul Lavin telephoned Mr. Soucy to inform him that a complaint had been filed concerning the mailing. Mr. Lavin asked where the money came from. Mr. Soucy told Mr. Lavin that Dana Saucier (a former paper industry executive) had provided most of the money. (At the July 29, 2013 hearing, the Commission staff plans to introduce into evidence a contemporaneous e-mail from Mr. Lavin documenting the conversation.)
- Version #2. On the morning of Saturday, November 3, 2012, I called Mr. Soucy. I told him I was gathering preliminary information for the Commission's meeting. (Exhibit 3) He agreed to talk to me with no apparent reluctance. I asked where he got the money for the mailing. Mr. Soucy responded that the money for the mailing came from small donors contributing less than \$100. (Id.) I asked him directly whether he was aware that money had come from any other donor, other than these small donors and possibly Dana Saucier and James Majka. He replied no. (Id.)
- Version #3. At your meeting on Monday, November 5, 2012, Mr. Soucy responded to questions by the Commissioners and staff by telephone. He said that Kenneth Nadeau, Norman Nadeau, and Ronaldo Thibeault⁸ had each given him \$500 in cash that he put into his safe at home. (11/5/2012 Transcript at 25-27) He referred to Norman Nadeau as a "snowbird" from Connecticut who has a summer home in Fort Kent, and Ronaldo Thibeault as "a resident of Fort Kent." He said

⁸ Norman Nadeau is a brother of the candidate, who lives in Connecticut. Kenneth Nadeau, also a brother who lived in Connecticut, died shortly after the 2012 general election. Ronaldo Thibeault is Rep. Nadeau's stepfather, and lives in Florida as well as having a home in Fort Kent.

that Kenneth Nadeau was a “Connecticut resident” who “has a summer home in Fort Kent.” He did not explain the basis of his knowledge of these three men and their summer homes. (Id. at 25)

At the January 17 hearing, Mr. Majka, Mr. Saucier and Rep. Nadeau claimed not to know anything about the source of the money used for the mailing. (Id. at 59, 92 and 136)

Lack of documentary evidence

The respondents have not provided any bank documents to verify the source of \$1,500 in cash deposited by Mr. Soucy. For example, in March 2013, I wrote to Norman Nadeau requesting that he provide documentation of the \$500 contribution that was described by Philip Soucy on November 5, 2012. (This letter will be offered as an exhibit at the July 29, 2013 hearing.) I have received no response from Norman Nadeau.

Inconsistencies with responses by others

Mr. Soucy’s explanation – when examined closely – contains inconsistencies with testimony by others. On November 5, 2012, Mr. Soucy stated that he received cash from Mr. Soucy’s three relatives, after the printer told Mr. Saucier and Mr. Majka that the mailing would cost \$1,500:

Q: Could you describe how you raised the money for the expenditure?

A: I was approached by three people who wanted to do something to help Mike And the people agreed to give us some money to buy, to buy this ad. Those were the only three people involved.

Q: So who were the, who were those three people?

A: The three people were R[onald] Thibeault, a resident, a resident of Fort Kent, Norman Nadeau, a snowbird, actually he lives in Connecticut but has a summer home in Fort Kent, Kenneth Nadeau, Connecticut resident, has a summer home in Fort Kent.

...

Q: [H]ow was the cost determined?

...

A: All I know is I was told that we'd need, we'd need about \$1,500 to put, to put the printing by the printer, how much it would cost. He gave us an idea, told us what it would cost, and we proceeded and raised the money. Once we had enough we, had made the purchase. [emphasis added]

Q: Did you receive the money from the three individuals?

A: Oh I, yes I did.

...

Q: Did you receive cash from them or checks?

A: Cash.

(11/05/2012 Transcript at 25-26) Mr. Soucy said that once he received the cash, he put it in a safe in his home. (Id. at 26-27)

The sequence of events as described by Mr. Soucy is completely different than as described by Dana Saucier. Mr. Saucier said that he and James Majka came up with the idea of a mailer after reviewing the October 31 Fort Kent newspapers with Rep. Nadeau in the Nadeau campaign office. (1/17/2013 Transcript at 80-81) That day (a Wednesday), Mr. Saucier and Mr. Majka prepared the mailing. (Id. at 82-83) On Thursday, November 1, they provided it to the printers. (Id. at 83)

Mr. Saucier testified that he had heard from Mr. Soucy that Mr. Soucy had money available "to do these kinds of mailers" a significant time before the mailing was arranged. (1/17/2013 Transcript, at 92-93) Once the mailing was underway, Mr. Saucier contacted Mr. Soucy on the premise that money was still available even though Mr. Saucier was not sure if there was any money remaining. (Id. at 97)

If the idea of the mailing arose on October 31, and the mailing was put together in 24-36 hours as Mr. Saucier testified (Id. at 82-83), then how could Mr. Soucy have received cash

from out-of-state sources such as Kenneth Nadeau, Norman Nadeau, and Ronaldo Thibeault in time for him to deposit that cash in his account on November 1, 2012?

Cash that Mr. Nadeau received from his business

The financial records obtained through the Commission's investigative subpoenas indicate that during the last five weeks of his campaign Michael Nadeau withdrew significant amounts of cash from his business, Mike's & Sons, including \$2,000 on Thursday, November 1 – the same day that Philip Soucy paid for the District 1 mailing with his personal credit card and deposited \$1,500 in cash into his bank account to reimburse himself. Other withdrawals totaling \$5,000 were made between October 1 – November 1, 2012 for a total of \$7,000. Records of these transactions and testimony concerning them will be presented at the July 29 hearing.

Expected Witnesses for July 29 Hearing

The following witnesses have been subpoenaed or requested to appear at the July 29, 2013 hearing:

Witness	Topics
Alicia Nadeau (daughter-in-law of candidate; bookkeeper of Mike's & Sons)	Bookkeeping practices of Mike's & Sons; money received by Rep. Nadeau from his business
Ronaldo Thibeault (step-father of candidate)	Possible contribution of \$500
Norman Nadeau (brother of candidate)	Possible contribution of \$500
Andre Cushing	Communications with candidate and others concerning District 1 race; independent expenditures and the sources of funds for the expenditures; advice from Commission staff concerning PAC threshold of \$1,500

In addition, the investigator from the Office of Maine Attorney General will be available to testify, if necessary, concerning the interview responses she received during her interviews of Norman Nadeau, Alicia Nadeau, and Ronaldo Thibeault.

Candidate's Political Committee and Agents

At the November 5, 2012 meeting, the Commission discussed the issue of whether campaign treasurer Philip Soucy should be considered an agent of Michael Nadeau, as

argued by the Maine Democratic Party in its complaint. This factual question is clearly relevant because of the wording of 21-A M.R.S.A. § 1015(5):

Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, *a candidate's political committee or their agents* is considered to be a contribution to that candidate. (Emphasis added.)

The Commission should also consider the factual question of whether Mr. Majka, Mr. Saucier and Mr. Soucy are part of the “candidate’s political committee.”

The term “political committee” is defined in Maine’s Election Law to mean “2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.” (21-A M.R.S.A. § 1(30)) The term “agent” is not defined in the Election Law. As the agency charged with administering the campaign finance provisions of Maine’s Election Law, the Commission has the authority and discretion to interpret statutory terms such as “candidate’s political committee” and “agents” and apply them in a manner consistent with legislative intent, to effectuate the underlying purposes of the statutory scheme.

Consistent with the principles articulated by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), the purpose of the coordinated expenditure provision in 21-A M.R.S.A. § 1015(5) is to distinguish between contributions, which may be restricted by law in order to prevent corruption and the appearance of corruption, and independent expenditures, which may not be restricted. It is interesting to note that those seeking to uphold the federal law ceiling on independent expenditures that was being challenged in *Buckley* argued to the court that it was “necessary to prevent would-be contributors from avoiding the contribution limits by the simple expedient of paying directly for media advertisements or for other portions of the candidate’s campaign activities.” 424 U.S. at 46. The Supreme Court rejected this argument, noting that “such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act” and that the contribution ceilings in the statute “prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions.” 424 U.S. at 46-47.

In a privately financed campaign, distinguishing such “disguised contributions” from truly independent expenditures is important to avoid circumvention of contribution limits designed to prevent corruption and the appearance of corruption. It is particularly critical in the context of a Maine Clean Election Act campaign, since MCEA candidates are prohibited from accepting *any* contributions.

Thus, the Maine Legislature has determined that if an individual in “a candidate’s political committee” or an agent of the candidate or committee cooperates, consults or acts in concert with, another person in making a campaign expenditure, the candidate is deemed to have received a contribution. (21-A M.R.S.A. § 1015(5)) Otherwise a candidate could easily circumvent contribution limits and restrictions by asking their associates and surrogates to encourage others to spend unlimited amounts to promote the candidate.

The staff considers the following facts and statutory provisions relevant to determining whether Jim Majka, Phil Soucy and Dana Saucier were part of Rep. Nadeau’s political committee and/or were agents of the candidate or his political committee when expenditures were made on the communications at issue here.

James Majka

- Mr. Majka was a very active volunteer in support of Michael Nadeau’s election. He had frequent personal contact with the candidate and received personal direction from the candidate – sometimes on a daily basis. At the January 17, 2013 hearing, Mr. Majka testified that he would “see Mike” and update the campaign website “on a daily basis or every two or three days, or once a week.” (1/17/2013 Transcript at 52) Rep. Nadeau testified that “I would see Jim sometimes every day, sometimes two or three days.” (Id. at 130)
- Mr. Majka’s role in the campaign was one of significant responsibility. He was in charge of the candidate’s campaign website (www.mikenadeau.net) and Facebook page. These are important communications tools to get a candidate’s message out to voters, particularly for a candidate who is not meeting with voters by going door-to-door, as was the case with Rep. Nadeau. (Id. at 125)

- Mr. Majka was the only one who placed material on the web for the candidate. (Id. at 61-62, 66, 150) He had both express and implied authority from the candidate to do so.
- The Nadeau campaign compensated Mr. Majka for his website work. Under Chapter 1, Section 6(9)(B), coordination is presumed when any individual who has received campaign-related compensation within the prior 12 months preceding the expenditure cooperated making the expenditure.

Dana Saucier

- Mr. Saucier met privately with the candidate on a weekly basis during the last four or five weeks before the election to discuss campaign strategy and tactics. (1/17/13 Transcript at 76-78)
- Mr. Saucier also distributed flyers door-to-door (Id. at 76), put up the candidate's campaign signs (Id. at 126), and did errands for the candidate (Id.)

Philip Soucy

- Under Maine campaign finance law, every legislative candidate who raises and spends money is required to appoint a campaign treasurer, and to disclose the identity of the treasurer to the public in a registration form. (21-A M.R.S.A. § 1013-A(1)(A)) The treasurer has statutorily defined duties to file financial reports, certify that the reports are accurate and complete, and keep records of the campaign. (21-A M.R.S.A. §§1016 & 1017(5)) Under the Commission's longstanding procedures, the treasurer receives notices of filing deadlines and other notices.
- Maine Clean Election Act candidates are statutorily required to appoint *another* person to be the treasurer. The treasurer is thus the one person (other than the candidate) who is required by law to be part of the candidate's campaign. (21-A M.R.S.A. § 1013-A(1)(A))
- In actual practice, Philip Soucy performed some of the statutory duties of the treasurer by certifying that two of the candidate's campaign finance reports were complete. (Exhibits 30 and 31) He also performed the practical duty of receiving

notices from the Commission concerning the campaign's legal responsibilities and contacting the candidate "to make sure that the questions were being asked and the work was being done" (11/5/2012 Transcript at 19)

- Mr. Soucy was further identified by campaign volunteers as the source of funds for the campaign. Mr. Saucier testified, "I knew him to be the treasurer of the campaign, but he was also the individual who said that he had money to be able to do these kinds of mailers or these kinds of other advertisements that we might want to do that with." (1/17/13 Transcript at 92)

Factual and Legal Issues to be Determined by the Commission

There are a number of factual and legal issues that the Commission will need to address at the conclusion of the July 29, 2013 hearing. These are outlined in the Notice of Hearing, dated June 21, 2013, and pertain primarily to Rep. Nadeau and his campaign. The staff will defer making any final recommendations with regard to findings of violation until the conclusion of that hearing. If the Commission determines that Rep. Nadeau violated 21-A M.R.S.A. § 1125(6), the Commission must consider whether to assess a penalty against Rep. Nadeau and whether to require him to repay public campaign funds pursuant to 21-A M.R.S.A. § 1127(1).

As indicated in the Notice of Hearing, the staff recommends that the Commission defer making any final determination regarding violations by Mr. Soucy until after Mr. Soucy's criminal case has been resolved.

With respect to Citizens for Effective Government, no evidence has been presented showing that the expenditures made by this group were in excess of \$1,500 for the purpose of influencing the election of Mike Nadeau or any other candidate. Accordingly, there appears to be no basis for a finding of violation of the PAC statutes, and the staff recommends that this portion of the investigation be dismissed.

Thank you for consideration of this memorandum.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Timothy C. Woodcock, Esq., attorney for Rep. Michael Nadeau
William P. Logan, Esq., attorney for Philip Soucy
Katherine R. Knox, Esq., attorney for the Maine Democratic Party

From: Jonathan Wayne, Executive Director

cc: Walter F. McKee, Commission Chair
Assistant Attorney General Phyllis Gardiner, Commission Counsel

Date: June 21, 2013

NOTICE OF HEARING FOR JULY 29, 2013

Hearing Scheduled for July 29, 2013

The Maine Commission on Governmental Ethics and Election Practices has scheduled a hearing to continue its investigation of issues raised in a complaint by the Maine Democratic Party concerning spending by L. Philip Soucy and others under the name of Citizens for Effective Government to promote Michael Nadeau, candidate for Maine House of Representatives, District #1. The hearing will be held on Wednesday, July 29, 2013 at 9:00 a.m. at the Commission's office at 45 Memorial Circle, 2nd Floor, in Augusta, Maine. Part of the hearing may be held at a separate location to be announced to accommodate testimony by videoconference. The hearing is being held pursuant to 21-A M.R.S. § 1003.

At a meeting on November 5, 2012, after hearing from Mr. Soucy, his counsel, counsel for the Maine Democratic Party, and Commission staff, the Commission made initial findings that:

- (1) a coordinated expenditure (i.e., one made "in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents") occurred under Title 21-A, section 1015(5) as a result of the involvement of treasurer L. Philip Soucy in the Mike Nadeau campaign and Citizens for Effective Government, and

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE
WEBSITE: WWW.MAINE.GOV/ETHICS

PHONE: (207) 287-4179

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- (2) the coordinated expenditure constituted a campaign contribution to the Mike Nadeau campaign which is not allowed under the Maine Clean Election Act.

The Commission then directed its staff to continue an investigation into the factual issues concerning: 1) the expenditure by Citizens for Effective Government, 2) whether Citizens for Effective Government should have registered as a political action committee, and 3) the sworn statement by L. Philip Soucy that there was no coordination between the Nadeau campaign and Citizens for Effective Government regarding the expenditure for the communication.

The Commission held a hearing on January 17, 2013 to receive testimony that focused on two communications purchased by supporters of Mr. Nadeau to promote his election. At the conclusion of the January 17 hearing the Commission and its staff noted that further investigation and additional testimony would likely be necessary to conclude the investigation. That additional testimony will be received by the Commissioners on July 29, along with the introduction of additional documentary evidence.

The July 29, 2013 hearing will be conducted in accordance with Chapter 2 of the Commission's rules (available at www.maine.gov/ethics) and the Maine Administrative Procedure Act, 5 M.R.S. §§ 8001 et seq. If members of the public wish to provide comments at the proceeding, the Commission will consider those requests in accordance with 5 M.R.S. § 9054(2).

Factual and Legal Issues to be Determined by the Commission

At the July 29, 2013 hearing and in deliberations following the receipt of all the evidence, the Commission will likely address the following factual and legal issues:

- (1) whether Michael Nadeau should be found in violation of the Maine Clean Election Act (21-A M.R.S. § 1125(6)) for receiving a contribution in the form of a

coordinated expenditure by the group known as Citizens for Effective Government.¹

- (A) Did Michael Nadeau request or suggest that James Majka, Dana Saucier, and/or Philip Soucy engage in preparing and distributing a paid mailing to households in House District #1 for the purpose of influencing the election of Michael Nadeau as a representative of that district, or did Michael Nadeau consult or cooperate with them on the mailing, thereby resulting in the expenditure for the mailing constituting a contribution to Mr. Nadeau under 21-A M.R.S. § 1015(5)?
 - (B) Were James Majka, Dana Saucier and/or Philip Soucy part of the candidate's political committee or agents for the candidate or the candidate's political committee, thereby resulting in the expenditure for the mailing constituting a contribution to Mr. Nadeau under 21-A M.R.S. § 1015(5)?
 - (C) What were the sources of funds for the mailing, and did Mr. Nadeau have any role in providing or obtaining the funds?
- (2) whether James Majka made an expenditure of \$420 for an advertisement in the Fiddlehead Focus newspaper independently of Michael Nadeau, his committee, and their agents or whether Michael Nadeau should be found in violation of the Maine Clean Election Act (21-A M.R.S. § 1125(6)) for receiving a contribution in the form of a coordinated expenditure on this advertisement.²
- (A) Did publication of the advertisement disseminate written material prepared by Michael Nadeau, thereby resulting in the expenditure for the advertisement constituting a contribution to Mr. Nadeau under 21-A M.R.S. § 1015(5)?
 - (B) Did Michael Nadeau request or suggest that James Majka place the ad in the Fiddlehead Focus newspaper, or did Michael Nadeau consult or cooperate with Mr. Majka on the advertisement, thereby resulting in the expenditure for the advertisement constituting a contribution to Mr. Nadeau under 21-A M.R.S. § 1015(5)?
 - (C) Was James Majka part of the candidate's political committee or an agent for the candidate or the candidate's political committee, thereby resulting in the expenditure for the advertisement constituting a contribution to Mr. Nadeau under 21-A M.R.S. § 1015(5)?
 - (D) What was the source of funds for the advertisement, and did Mr. Nadeau have any role in providing or obtaining the funds?

¹ This was listed as issue #1 in the notice for the January 17, 2013 hearing and is broken down in more detail below.

² This was listed as issue #5 in the notice for the January 17, 2013 hearing but is expanded here for clarification.

The Commission staff expects that the issue of whether a penalty should be imposed on Rep. Nadeau for receiving a contribution (listed as issue #2 in the notice for the January 17, 2013 hearing) will be considered by the Commission on July 29, 2013, depending on what factual findings and conclusions of law the Commission makes regarding the above issues.

The Commission staff will recommend to the Commission that the issue of whether Mr. Soucy made a material false statement in an affidavit submitted to the Commission (listed as issue #3 in the January 17, 2013 hearing notice) be postponed until after the resolution of a pending criminal charge against Mr. Soucy in Maine District Court in Augusta concerning the same matter.

Finally, based on evidence received during the Commission's investigation, the staff will recommend to the Commission that the issue of whether Citizens for Effective Government was required to register and file reports as a political action committee (listed as issue #4 in the January 17, 2013 hearing notice) be discontinued as an active issue in the investigation.

Opportunity for Legal Argument

In addition to presenting evidence, there will be an opportunity for you to present legal argument at the July 29th meeting concerning the legal and factual issues before the Commission. The Commission staff anticipates that the Commission will reach a final determination at the July 29th meeting after deliberations following the hearing, but it is also possible that the Commission will close the hearing and make a determination at a subsequent meeting. You will receive notice and have an opportunity to attend any such meeting.

Relevant Statutes

The following statutory and regulatory provisions are relevant to the proceeding:

21-A M.R.S. § 1(30)

21-A M.R.S. § 1012(2)(A)

21-A M.R.S. § 1012(3)(A)

21-A M.R.S. § 1013-A

21-A M.R.S. § 1015(5)

21-A M.R.S. § 1019-B(5)

21-A M.R.S. § 1125(5-A)(F)

21-A M.R.S. § 1125(6)

21-A M.R.S. § 1127(1)

94-270 Code of Maine Rules ch. 1, § 6(9)

94-270 Code of Maine Rules ch. 3, § 6(1) & (2)

Questions

If you have any questions concerning this notice, please call me at (207) 287-4179 or e-mail me at Jonathan.Wayne@maine.gov.

21-A §1. DEFINITIONS

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 161, §6 (NEW) .]

[. . .]

→ **30. Political committee.** "Political committee" means 2 or more persons associated for the purpose of promoting or defeating a candidate, party or principle.

[. . .]

[1985, c. 161, §6 (NEW) .]

[1997, c. 436, §7 (NEW) .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1985, c. 357, §§1,19 (AMD). 1985, c. 614, §§2,3 (AMD). 1987, c. 423, §1 (AMD). 1993, c. 447, §1 (AMD). 1995, c. 459, §1 (AMD). 1997, c. 436, §§1-7 (AMD). 1999, c. 426, §1 (AMD). 1999, c. 645, §1 (AMD). 2001, c. 310, §§1,2 (AMD). 2001, c. 637, §1 (AMD). 2003, c. 407, §§1-4 (AMD). 2003, c. 447, §§1-3 (AMD). 2005, c. 196, §1 (AMD). 2005, c. 364, §1 (AMD). 2005, c. 404, §1 (AMD). 2005, c. 453, §§1-4 (AMD). 2005, c. 568, §1 (AMD). 2007, c. 122, §§1, 2 (AMD). 2007, c. 455, §1 (AMD). 2007, c. 515, §2 (AMD). 2009, c. 253, §§1-6 (AMD). 2011, c. 342, §4 (AMD).

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21-A §1012. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 161, §6 (NEW).]

[. . .]

2. Contribution. The term "contribution:"

A. Includes:

- 
- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
 - (2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;
 - (3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and
 - (4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and [1995, c. 483, §3 (AMD).]

B. Does not include:

- (1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;
- (2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed \$100 with respect to any election;
- (3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;
- (4) Any unreimbursed travel expenses incurred and paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election;
- (4-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;
- (5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a state party committee to its employees for the following purposes:
 - (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or

- (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider;
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate; or
- (11) A purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee. [2011, c. 389, §6 (AMD).]

3. Expenditure. The term "expenditure:"

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and
- (4) A payment or promise of payment to a person contracted with for the purpose of influencing any campaign as defined in section 1052, subsection 1; and [2011, c. 389, §7 (AMD).]

[. . .]

[2011, c. 389, §6 (AMD) .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1987, c. 160, §1 (AMD). 1991, c. 839, §3 (AMD). 1991, c. 839, §34 (AFF). 1995, c. 483, §3 (AMD). 1999, c. 432, §§1,2 (AMD). 2003, c. 615, §1 (AMD). 2005, c. 301, §§7-9 (AMD). 2005, c. 575, §2 (AMD). 2007, c. 443, Pt. A, §§3-6 (AMD). 2011, c. 389, §§6-8 (AMD).

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21-A §1013-A. REGISTRATION

1. Candidates, their treasurers and political committees. A candidate shall register the candidate's name and the name of a treasurer with the commission at least once in each legislative biennium, as provided in this section. A candidate may have only one treasurer, who must be appointed pursuant to paragraph A or B. For purposes of this section, "legislative biennium" means the term of office a person is elected to serve in the Legislature.


→ A. No later than 10 days after becoming a candidate and before accepting contributions, making expenditures or incurring obligations, a candidate for state or county office or a candidate for municipal office who has not filed a written notice in accordance with section 1011, subsection 4, paragraph A shall appoint a treasurer. The candidate may serve as treasurer, except that a participating candidate, as defined in section 1122, subsection 6, or a candidate certified in accordance with section 1125 may not serve as treasurer, except that the candidate may serve as treasurer or deputy treasurer for up to 14 days after declaring an intention to qualify for campaign financing under chapter 14 until the candidate identifies another person to serve as treasurer. The candidate may have only one treasurer, who is responsible for the filing of campaign finance reports under this chapter. A candidate shall register the candidate's name and address and the name and address of the treasurer appointed under this section no later than 10 days after the appointment of the treasurer. A candidate may accept contributions personally or make or authorize expenditures personally, as long as the candidate reports all contributions and expenditures to the treasurer. The treasurer shall make a consolidated report of all income and expenditures and provide this report to the commission.

(1) A candidate may appoint a deputy treasurer to act in the absence of the treasurer. The deputy treasurer, when acting in the absence of the treasurer, has the same powers and responsibilities as the treasurer. A candidate certified in accordance with section 1125 may not serve as deputy treasurer. When a treasurer dies or resigns, the deputy treasurer may not assume the position of treasurer unless the candidate appoints the deputy treasurer to the position of treasurer. The candidate shall report the name and address of the deputy treasurer to the commission no later than 10 days after the deputy treasurer has been appointed. [2011, c. 389, §62 (AFF); 2011, c. 389, §9 (AMD).]

→ B. A candidate may authorize one political committee to promote the candidate's election. No later than 10 days after appointing a political committee and before accepting contributions, making expenditures or incurring obligations, a candidate for state, county or municipal office shall appoint a treasurer of the political committee. The treasurer of the political committee is responsible for filing campaign finance reports under this chapter. No later than 10 days after appointing a political committee, the candidate shall register with the commission the following information regarding the political committee:

- (1) The name of the committee;
- (2) The name and address of the committee's treasurer;
- (3) The name of the candidate who authorized the committee; and
- (4) The names and addresses of the committee's officers. [1995, c. 483, §4 (AMD).]

[. . .]

 **5. Changes in registration information.** Every change in information required by this section to be reported to the commission shall be reported within 10 days of the date of the change.

[1989, c. 504, §§4, 31 (NEW) .]

SECTION HISTORY

1989, c. 504, §§4,31 (NEW). 1989, c. 833, §1 (AMD). 1991, c. 839, §§4-6 (AMD). 1991, c. 839, §34 (AFF). RR 1995, c. 2, §35 (COR). 1995, c. 384, §1 (AMD). 1995, c. 483, §§4,5 (AMD). 1999, c. 729, §1 (AMD). 2007, c. 443, Pt. A, §7 (AMD). 2007, c. 642, §14 (AFF). 2007, c. 642, §9 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 366, §2 (AMD). 2011, c. 389, §62 (AFF). 2011, c. 389, §9 (AMD).

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21-A §1015. LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

[. . .]

→ **5. Other contributions and expenditures.** Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate.

→ The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

[1989, c. 504, §§7, 31 (AMD) .]

[. . .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1989, c. 504, §§7, 31 (AMD). 1991, c. 839, §11 (AMD). 1991, c. 839, §34 (AFF). IB 1995, c. 1, §11 (AMD). 1995, c. 384, §2 (AMD). 1999, c. 729, §§2, 3 (AMD). 2007, c. 443, Pt. A, §§10-14 (AMD). 2009, c. 286, §§2, 3 (AMD). 2011, c. 382, §§1, 2 (AMD). 2011, c. 389, §14 (AMD).

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21-A §1017. REPORTS BY CANDIDATES

[. . .]

→ **5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor and any refund that a payee has made to the candidate or an agent of the candidate. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

[2011, c. 522, §1 (AMD) .]

[. . .]

SECTION HISTORY

1985, c. 161, §6 (NEW). 1985, c. 383, §14 (AMD). 1985, c. 566, §§1,2 (AMD). 1987, c. 726, §§1,2 (AMD). 1989, c. 166, §10 (AMD). 1989, c. 504, §§11-17,31 (AMD). 1989, c. 833, §§2-7,21 (AMD). 1989, c. 878, §§A49,50 (AMD). 1991, c. 839, §§14-22 (AMD). 1991, c. 839, §34 (AFF). IB 1995, c. 1, §12 (AMD). RR 1995, c. 2, §36 (COR). 1995, c. 193, §§1-3 (AMD). 1995, c. 483, §§7,8 (AMD). 1999, c. 157, §1 (AMD). 1999, c. 729, §4 (AMD). RR 2001, c. 1, §25 (COR). 2001, c. 470, §6 (AMD). 2001, c. 589, §§1,2 (AMD). 2003, c. 628, §§B1-3 (AMD). 2005, c. 301, §§13-17 (AMD). 2005, c. 542, §2 (AMD). 2007, c. 443, Pt. A, §16 (AMD). 2007, c. 567, §1 (AMD). 2007, c. 642, §10 (AMD). RR 2009, c. 2, §46 (COR). 2009, c. 138, §1 (AMD). 2009, c. 190, Pt. A, §§5-7 (AMD). 2009, c. 302, §4 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 366, §3 (AMD). 2009, c. 524, §5 (AMD). 2011, c. 389, §15 (AMD). 2011, c. 389, §62 (AFF). 2011, c. 522, §1 (AMD). 2011, c. 558, §1 (AMD).

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21-A §1019-B. REPORTS OF INDEPENDENT EXPENDITURES

[. . .]

5. Exclusions. An independent expenditure does not include:

→ A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents; [2011, c. 389, §21 (NEW) .]

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting; [2011, c. 389, §21 (NEW) .]

C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and [2011, c. 389, §21 (NEW) .]

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate. [2011, c. 389, §21 (NEW) .]

SECTION HISTORY

2003, c. 448, §3 (NEW). 2007, c. 443, Pt. A, §20 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 366, §5 (AMD). 2009, c. 524, §§6, 7 (AMD). 2011, c. 389, §§20, 21 (AMD). 2011, c. 389, §62 (AFF). 2011, c. 558, §2 (AMD). MRSA T. 21-A, §1019-B, sub-§3 (AMD).

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21-A §1125. TERMS OF PARTICIPATION

21-A §1125. TERMS OF PARTICIPATION

[. . .]

5-A. Revocation of certification. The certification of a participating candidate may be revoked at any time if the commission determines that the candidate or an agent of the candidate:

A. Did not submit the required number of valid qualifying contributions; [2007, c. 443, Pt. B, §6 (NEW) .]

B. Failed to qualify as a candidate by petition or other means; [2007, c. 443, Pt. B, §6 (NEW) .]

C. Submitted any fraudulent qualifying contributions or qualifying contributions that were not made by the named contributor; [2007, c. 443, Pt. B, §6 (NEW) .]

D. Misrepresented to a contributor the purpose of the qualifying contribution or obtaining the contributor's signature on the receipt and acknowledgement form; [2007, c. 443, Pt. B, §6 (NEW) .]

E. Failed to fully comply with the seed money restrictions; [2007, c. 443, Pt. B, §6 (NEW) .]

F. Knowingly accepted any contributions, including any in-kind contributions, or used funds other than fund revenues distributed under this chapter to make campaign-related expenditures without the permission of the commission; [2007, c. 443, Pt. B, §6 (NEW) .]

G. Knowingly made a false statement or material misrepresentation in any report or other document required to be filed under this chapter or chapter 13; [2009, c. 363, §6 (AMD) .]


H. Otherwise substantially violated the provisions of this chapter or chapter 13; or [2009, c. 363, §6 (AMD) .]

I. As a gubernatorial candidate, failed to properly report seed money contributions as required by this section. [2009, c. 363, §6 (NEW) .]

The determination to revoke the certification of a candidate must be made by a vote of the members of the commission after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the commission within 3 days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

[2009, c. 363, §6 (AMD) .]

[. . .]

 **6. Restrictions on contributions and expenditures for certified candidates.** After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[2011, c. 389, §54 (AMD) .]

[. . .]

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate by the commission's executive director, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the executive director as follows.

A. A challenger may appeal to the commission within 7 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal. [2011, c. 389, §59 (AMD) .]

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing, except that the commission may extend this period upon agreement of the challenger and the candidate whose certification is the subject of the appeal, or in response to the request of either party upon a showing of good cause. The appellant has the burden of proving that the certification decision was in error as a matter of law or was based on factual error. The commission must rule on the appeal within 5 business days after the completion of the hearing. [2007, c. 443, Pt. B, §6 (AMD) .]

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court within 5 days of the date of the commission's decision. The action must be conducted in accordance with Rule 80C of the Maine Rules of Civil Procedure, except that the court shall issue its written decision within 20 days of the date of the commission's decision. Any aggrieved party may appeal the decision of the Superior Court by filing a notice of appeal within 3 days of that decision. The record on appeal must be transmitted to the Law Court within 3 days after the notice of appeal is filed. After filing the notice of appeal, the parties have 4 days to file briefs and appendices with the clerk of the court. The court shall consider the case as soon as possible after the record and briefs have been filed and shall issue its decision within 14 days of the decision of the Superior Court. [2007, c. 443, Pt. B, §6 (AMD) .]

D. A candidate whose certification as a Maine Clean Election Act candidate is reversed on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court finds that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any. [2007, c. 443, Pt. B, §6 (AMD) .]


[2011, c. 389, §59 (AMD) .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2001, c. 465, §§4-6 (AMD). 2003, c. 270, §§1,2 (AMD). 2003, c. 448, §5 (AMD). 2003, c. 453, §§1,2 (AMD). 2003, c. 688, §§A21,22 (AMD). 2005, c. 301, §§29-32 (AMD). 2005, c. 542, §§3-5 (AMD). 2007, c. 240, Pt. F, §1 (AMD). 2007, c. 443, Pt. B, §6 (AMD). 2007, c. 567, §2 (AMD). 2007, c. 571, §§11, 12 (AMD). 2007, c. 642, §11 (AMD). 2009, c. 105, §1 (AMD). 2009, c. 190, Pt. B, §2 (AMD). 2009, c. 286, §§6-9 (AMD). 2009, c. 302, §§11-22 (AMD). 2009, c. 302, §24 (AFF). 2009, c. 363, §§2-11 (AMD). 2009, c. 524, §§14-18 (AMD). 2009, c. 652, Pt. A, §23 (AMD). 2009, c. 652, Pt. A, §24 (AFF). 2009, c. 652, Pt. A, §25 (AMD). 2009, c. 652, Pt. A, §26 (AFF). 2009, c. 652, Pt. A, §27 (AMD). 2009, c. 652, Pt. A, §28 (AFF). 2011, c. 389, §§51-59 (AMD). 2011, c. 389, §62 (AFF). 2011, c. 522, §§2, 3 (AMD). 2011, c. 522, §4 (AFF). 2011, c. 558, §§6-9 (AMD). MRS A T. 21-A, §1125, sub-§13 (AMD).

21-A §1127. VIOLATIONS

21-A §1127. VIOLATIONS



1. **Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[2011, c. 558, §10 (AMD) .]

[. . .]

SECTION HISTORY

IB 1995, c. 1, §17 (NEW). 2003, c. 81, §1 (AMD). 2005, c. 301, §33 (AMD). 2005, c. 542, §6 (AMD). 2009, c. 302, §23 (AMD). 2011, c. 558, §10 (AMD).

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94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

[. . .]

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.
3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, political action committees, and party committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.
4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee. A commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or other business reason has not made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor's business.
5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.
6. A commercial vendor that has extended credit to a candidate or political committee has not

made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or committee. The Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.

7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), and 21-A M.R.S.A. §1056, the following guidelines shall apply:

A. For all contributions received through the day of the primary election by candidates enrolled in a political party, the candidate shall designate on the applicable campaign finance report whether the candidate received the contribution for the primary or the general election. If a candidate receives a contribution before the primary election and designates it for the general election, the candidate must deposit the contribution in an account that is separate from all funds received for the primary election and may not use the contribution in any way to promote the candidate's nomination in the primary election.

B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.

C. All contributions made to a general election candidate from the day after the primary election through the date of the general election are deemed to be made for the general election.

D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.

E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.

F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

8. If a political committee that is required to file reports with the Commission sells an item to raise funds, the entire amount received is a contribution to the committee. If the political committee provides meals or entertainment at a fundraising event, the entire amount paid by the donor is a contribution to the committee. [FOR EXAMPLE: IF A SUPPORTER PAYS A CANDIDATE COMMITTEE \$20 FOR A T-SHIRT THAT COST THE CAMPAIGN \$5, THE SUPPORTER HAS MADE A \$20 CONTRIBUTION. IF A SUPPORTER PAYS \$100 FOR A TICKET TO A FUNDRAISING DINNER, THE SUPPORTER HAS MADE A \$100 CONTRIBUTION EVEN IF THE COMMITTEE PROVIDES A MEAL WORTH \$30.]

→ 9. If an expenditure is made to promote or support the nomination or election of a candidate, or to oppose or defeat the candidate's opponent(s), and the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the expenditure is considered to be a contribution from the spender to the candidate. As used within this subsection, the term "candidate" includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee.

→ A. In cooperation, consultation or in concert with includes, but is not limited to:

1. Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and

2. Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

→ B. An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, when

1. the expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the expenditure, has been the candidate's treasurer or an officer of the candidate's authorized committee, has had a paid or unpaid position managing the candidate's campaign, or has received any campaign-related compensation or reimbursement from the candidate;

2. when the candidate has directly shared the candidate's campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or

3. the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.

The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

C. If a candidate requests that a party committee, political action committee, or other potential spender not make any expenditure to promote or support the candidate, or oppose or defeat the candidate's opponent(s), the request does not constitute cooperation or coordination.

D. An expenditure will not be presumed to have been made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, solely because:

1. the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;

2. the person making the expenditure has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;

3. the person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;

4. the spender has also made a contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candidate's solicitation for a donation;

5. the expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders and the families thereof; or

6. the expenditure is made by an individual who spends \$100 or less for costs associated with a sign that is lettered or printed individually by hand and that reproduces or replicates a candidate's campaign-related design or graphic.

10. Funds or services received solely for the purpose of conducting activities to determine whether an individual should become a candidate are not contributions if the individual does not become a candidate. Examples of such activities include, but are not limited to, conducting a poll, telephone calls, and travel. The individual shall keep records of all such funds or services received. If the individual becomes a candidate, the funds or services received are contributions and are subject to the reporting requirements of 21-A M.R.S.A. §1017. The amount and source of such funds or the value of services received must be disclosed in the first report filed by the candidate or the candidate's authorized campaign committee, regardless of the date when the funds or services were received, in accordance with the Commission's procedures for reporting contributions.

Funds or services used by an individual for activities indicating that he or she has decided to become a candidate for a particular office are contributions. Examples of such activities include, but are not limited to: using general public political advertising to publicize his or her intention to campaign for office; hiring staff or consultants for campaign activities; raising funds in excess of what could reasonably be expected to be used for exploratory activities; making or authorizing statements that refer to him or her as a candidate; or taking action to qualify for the ballot.

STATUTORY AUTHORITY: 1 M.R.S.A. §1003(1); 21-A M.R.S.A. §1126.

EFFECTIVE DATE:
April 29, 1987

AMENDED:
December 28, 1991
December 14, 1994

REPEALED AND REPLACED:

November 1, 1998; also converted to MS Word format

NON-SUBSTANTIVE CHANGES:

December 3, 1998 - minor spelling and formatting

AMENDED:

May 9, 2005 – effective date of routine technical language adopted (signed by Chair on January 14, 2004 and signed by an Assistant Attorney General on February 19, 2004), filing 2005-133

May 9, 2005 – effective date of routine technical language adopted (signed by Chair on April 8, 2005 and signed by an Assistant Attorney General on April 28, 2005), filing 2005-134

May 4, 2005 – date of filing with the Secretary of State of Provisional Adoption (major substantive) language signed by Chair on April 8, 2005 and by an Assistant Attorney General on April 28, 2005, filing LR-2005-15, submitted by the Commission to the Legislature for review

October 12, 2005 - effective date major substantive final adoption (signed by Chair on July 13, 2005 and filed with the Secretary of State on September 12, 2005), filing 2005-379

April 25, 2007 - effective date of routine technical language adopted (signed by Chair on April 6, 2007 and signed by an Assistant Attorney General on April 17, 2007), filing 2007-144

March 15, 2008 - filing 2008-116

April 12, 2009 - filing 2009-152

November 29, 2009 – filing 2009-615

August 27, 2010 - filing 2010-387 (EMERGENCY)

November 25, 2010 – emergency period having expired, reverted to previous version

July 31, 2011 - effective date of major substantive final adoption (signed by Chair on June 23, 2011 and signed by an Assistant Attorney General on July 20, 2011), filing 2011-254

September 3, 2012 – filing 2012-245

May 11, 2013 - filing 2013-111



94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

[. . .]

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate must:

- 
1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;
 2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];
 3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
 4. not use revenues distributed from the Fund to purchase goods to sell for profit;
 5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

[. . .]

STATUTORY AUTHORITY: 1 M.R.S.A. §1003(1); 21-A M.R.S.A. §1126.

EFFECTIVE DATE:

November 1, 1998 – filing 98-447

NON-SUBSTANTIVE CHANGES:

December 3, 1998 - minor spelling and formatting

PROVISIONAL ADOPTION OF AMENDMENTS:

March 6, 2002 – filing LR-2002-16

FINAL ADOPTION (EFFECTIVE DATE):

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PROVISIONAL ADOPTION OF AMENDMENTS:

February 20, 2004 – filing LR-2004-6

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PROVISIONAL ADOPTION OF AMENDMENTS:

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December 23, 2009 – filing 2009-641

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PROVISIONAL ADOPTION OF AMENDMENTS:

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